

HOUSE BILL No. 1261

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-38-1-7.5; IC 35-42-4-11.

Synopsis: Sex offender procedures. Specifies the court in which a petition to remove the designation as a sexually violent predator or an offender against children must be filed, and provides that the petitioner has the burden of proving that the designation should be removed. (The introduced version of this bill was prepared by the sentencing policy study committee.)

Effective: July 1, 2009.

Foley, Lawson L, Smith V, Borders

January 13, 2009, read first time and referred to Committee on Interstate and International Cooperation.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

HOUSE BILL No. 1261

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-38-1-7.5 , AS AMENDED BY P.L.216-2007,
2 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2009]: Sec. 7.5. (a) As used in this section, "sexually violent
4 predator" means a person who suffers from a mental abnormality or
5 personality disorder that makes the individual likely to repeatedly
6 commit a sex offense (as defined in IC 11-8-8-5.2). The term includes
7 a person convicted in another jurisdiction who is identified as a
8 sexually violent predator under IC 11-8-8-20. The term does not
9 include a person no longer considered a sexually violent predator under
10 subsection (g).
11 (b) A person who:
12 (1) being at least eighteen (18) years of age, commits an offense
13 described in:
14 (A) IC 35-42-4-1;
15 (B) IC 35-42-4-2;
16 (C) IC 35-42-4-3 as a Class A or Class B felony;
17 (D) IC 35-42-4-5(a)(1);



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1 (E) IC 35-42-4-5(a)(2);
 2 (F) IC 35-42-4-5(a)(3);
 3 (G) IC 35-42-4-5(b)(1) as a Class A or Class B felony;
 4 (H) IC 35-42-4-5(b)(2);
 5 (I) IC 35-42-4-5(b)(3) as a Class A or Class B felony;
 6 (J) an attempt or conspiracy to commit a crime listed in
 7 clauses (A) through (I); or
 8 (K) a crime under the laws of another jurisdiction, including
 9 a military court, that is substantially equivalent to any of the
 10 offenses listed in clauses (A) through (J);
 11 (2) commits a sex offense (as defined in IC 11-8-8-5.2) while
 12 having a previous unrelated conviction for a sex offense for which
 13 the person is required to register as a sex or violent offender under
 14 IC 11-8-8;
 15 (3) commits a sex offense (as defined in IC 11-8-8-5.2) while
 16 having had a previous unrelated adjudication as a delinquent child
 17 for an act that would be a sex offense if committed by an adult, if,
 18 after considering expert testimony, a court finds by clear and
 19 convincing evidence that the person is likely to commit an
 20 additional sex offense; or
 21 (4) commits a sex offense (as defined in IC 11-8-8-5.2) while
 22 having had a previous unrelated adjudication as a delinquent child
 23 for an act that would be a sex offense if committed by an adult, if
 24 the person was required to register as a sex or violent offender
 25 under IC 11-8-8-5(b)(2);
 26 is a sexually violent predator. Except as provided in subsection (g) or
 27 (h), a person is a sexually violent predator by operation of law if an
 28 offense committed by the person satisfies the conditions set forth in
 29 subdivision (1) or (2) and the person was released from incarceration,
 30 secure detention, or probation for the offense after June 30, 1994.
 31 (c) This section applies whenever a court sentences a person or a
 32 juvenile court issues a dispositional decree for a sex offense (as defined
 33 in IC 11-8-8-5.2) for which the person is required to register with the
 34 local law enforcement authority under IC 11-8-8.
 35 (d) At the sentencing hearing, the court shall indicate on the record
 36 whether the person has been convicted of an offense that makes the
 37 person a sexually violent predator under subsection (b).
 38 (e) If a person is not a sexually violent predator under subsection
 39 (b), the prosecuting attorney may request the court to conduct a hearing
 40 to determine whether the person (including a child adjudicated to be a
 41 delinquent child) is a sexually violent predator under subsection (a). If
 42 the court grants the motion, the court shall appoint two (2)

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psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person is a sexually violent predator under subsection (a). A hearing conducted under this subsection may be combined with the person's sentencing hearing.

(f) If a person is a sexually violent predator:

(1) the person is required to register with the local law enforcement authority as provided in IC 11-8-8; and

(2) the court shall send notice to the department of correction.

(g) This subsection does not apply to a person who has two (2) or more unrelated convictions for an offense described in IC 11-8-8-4.5 for which the person is required to register under IC 11-8-8. A person who is a sexually violent predator may petition the **sentencing court or the juvenile court (if the person was convicted or adjudicated in Indiana), or the circuit or superior court with jurisdiction in the county in which the person resides (if the person was not convicted or adjudicated in Indiana)**, to consider whether the person should no longer be considered a sexually violent predator. The person may file a petition under this subsection not earlier than ten (10) years after:

(1) the sentencing court or juvenile court makes its determination under subsection (e); or

(2) the person is released from incarceration or secure detention.

A person may file a petition under this subsection not more than one (1) time per year. A court may dismiss a petition filed under this subsection or conduct a hearing to determine if the person should no longer be considered a sexually violent predator. If the court conducts a hearing, the court shall appoint two (2) psychologists or psychiatrists who have expertise in criminal behavioral disorders to evaluate the person and testify at the hearing. After conducting the hearing and considering the testimony of the two (2) psychologists or psychiatrists, the court shall determine whether the person **has proved by a preponderance of the evidence (if the person has been found to be a sexually violent predator under subsection (e)), or by clear and convincing evidence (if the person is a sexually violent predator under subsection (b)), that the person** should no longer be considered a sexually violent predator under subsection (a). If a court finds that the person should no longer be considered a sexually violent predator, the court shall send notice to the department of correction that the person is no longer considered a sexually violent predator. Notwithstanding any other law, a condition imposed on a person due to the person's

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status as a sexually violent predator, including lifetime parole or GPS monitoring, does not apply to a person no longer considered a sexually violent predator.

(h) A person is not a sexually violent predator by operation of law under subsection (b)(1) if all of the following conditions are met:

(1) The victim was not less than twelve (12) years of age at the time the offense was committed.

(2) The person is not more than four (4) years older than the victim.

(3) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term "ongoing personal relationship" does not include a family relationship.

(4) The offense committed by the person was not any of the following:

(A) Rape (IC 35-42-4-1).

(B) Criminal deviate conduct (IC 35-42-4-2).

(C) An offense committed by using or threatening the use of deadly force or while armed with a deadly weapon.

(D) An offense that results in serious bodily injury.

(E) An offense that is facilitated by furnishing the victim, without the victim's knowledge, with a drug (as defined in IC 16-42-19-2(1)) or a controlled substance (as defined in IC 35-48-1-9) or knowing that the victim was furnished with the drug or controlled substance without the victim's knowledge.

(5) The person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person.

(6) The person did not have a position of authority or substantial influence over the victim.

(7) The court finds that the person should not be considered a sexually violent predator.

SECTION 2. IC 35-42-4-11, AS AMENDED BY P.L.216-2007, SECTION 47, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 11. (a) As used in this section, and except as provided in subsection (d), "offender against children" means a person required to register as a sex or violent offender under IC 11-8-8 who has been:

(1) found to be a sexually violent predator under IC 35-38-1-7.5; or

(2) convicted of one (1) or more of the following offenses:

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- 1 (A) Child molesting (IC 35-42-4-3).
- 2 (B) Child exploitation (IC 35-42-4-4(b)).
- 3 (C) Child solicitation (IC 35-42-4-6).
- 4 (D) Child seduction (IC 35-42-4-7).
- 5 (E) Kidnapping (IC 35-42-3-2), if the victim is less than
- 6 eighteen (18) years of age and the person is not the child's
- 7 parent or guardian.
- 8 (F) Attempt to commit or conspiracy to commit an offense
- 9 listed in clauses (A) through (E).
- 10 (G) An offense in another jurisdiction that is substantially
- 11 similar to an offense described in clauses (A) through (F).

12 A person is an offender against children by operation of law if the
 13 person meets the conditions described in subdivision (1) or (2) at any
 14 time.

15 (b) As used in this section, "reside" means to spend more than three
 16 (3) nights in:

- 17 (1) a residence; or
- 18 (2) if the person does not reside in a residence, a particular
- 19 location;

20 in any thirty (30) day period.

21 (c) An offender against children who knowingly or intentionally:

- 22 (1) resides within one thousand (1,000) feet of:
- 23 (A) school property, not including property of an institution
- 24 providing postsecondary education;
- 25 (B) a youth program center; or
- 26 (C) a public park; or

27 (2) establishes a residence within one (1) mile of the residence of
 28 the victim of the offender's sex offense;

29 commits a sex offender residency offense, a Class D felony.

30 (d) This subsection does not apply to an offender against children
 31 who has two (2) or more unrelated convictions for an offense described
 32 in subsection (a). A person who is an offender against children may
 33 petition the **sentencing court or the juvenile court (if the person was**
 34 **convicted or adjudicated in Indiana), or the circuit or superior**
 35 **court with jurisdiction in the county in which the person resides (if**
 36 **the person was not convicted or adjudicated in Indiana)**, to consider
 37 whether the person should no longer be considered an offender against
 38 children. The person may file a petition under this subsection not
 39 earlier than ten (10) years after the person is released from
 40 incarceration, probation, or parole, whichever occurs last. A person
 41 may file a petition under this subsection not more than one (1) time per
 42 year. A court may dismiss a petition filed under this subsection or

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1 conduct a hearing to determine if the person should no longer be
2 considered an offender against children. If the court conducts a hearing,
3 the court shall appoint two (2) psychologists or psychiatrists who have
4 expertise in criminal behavioral disorders to evaluate the person and
5 testify at the hearing. After conducting the hearing and considering the
6 testimony of the two (2) psychologists or psychiatrists, the court shall
7 determine whether the person **has proved by clear and convincing**
8 **evidence that the person** should no longer be considered an offender
9 against children. If a court finds that the person should no longer be
10 considered an offender against children, the court shall send notice to
11 the department of correction that the person is no longer considered an
12 offender against children.

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